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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,097	01/20/2004	Berthold Hahn	P2001,0520	4556
24131	7590	04/27/2006	EXAMINER	
LERNER GREENBERG STEMER LLP			TRINH, MICHAEL MANH	
P O BOX 2480			ART UNIT	PAPER NUMBER
HOLLYWOOD, FL 33022-2480			2822	

DATE MAILED: 04/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/762,097	HAHN ET AL.	
	<b>Examiner</b> Michael Trinh	<b>Art Unit</b> 2822	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 February 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 18-33 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 and 34 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/28/06</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

\*\*\* This office action is in response to Applicant's Amendment filed February 06, 2006.

Claims 1-34 are pending, in which claim 34 has been newly added, and in which claims 18-33 are non-elected claims, without traverse.

\*\*\* The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

1. Claims 1,3-5,34 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawaguchi et al (Article title "The formation of crystalline defects...", 1998, pp 24-26).

Re claims 1 and 34: Kawaguchi teaches (at pages 24-28) a method for forming a light-emitting device (page 24, last 7 lines) comprising at least the steps of: forming at least one compound semiconductor layer based on gallium nitride and being an active layer or a part of an active layer sequence of the light emitting device (page 24, last 7 lines, pages 25,27); and setting growth parameters used during production of the compound semiconductor layer such that, at least in some cases in a vicinity of dislocations in the compound semiconductor layer, regions are produced in the compound semiconductor thickness than remaining regions of the layer having a lower compound semiconductor layer (Fig 4, page 28), and, re claim 1, thus inherently resulting in an energy barrier being built up in the regions having the lower thickness more than the other remaining regions, inherently. Re claim 3, the regions are formed with the lower thickness to be less than half as thick as the remaining regions of the compound semiconductor layer (as shown in Figure 4b; page 28). Re claim 4, wherein the compound semiconductor layer is formed from an  $In_xAl_yGa_{1-x-y}N$  compound semiconductor, where  $0 \leq x \leq 1$ ,  $0 \leq y \leq 1$  and  $x+y \leq 1$  (page 24, last 7 lines; Abstract; page 25). Re claim 5, wherein AlGaN is provided when  $x=0$  in the  $In_xAl_yGa_{1-x-y}N$ . (page 24, last 7, lines)

### ***Claim Rejections - 35 USC § 103***

2. Claims 2,6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi et al (Article title "The formation of crystalline defects...", 1998, pp 24-26) taken with Applicant's admitted prior art (present specification page 1-3).

Kawaguchi teaches (at pages 24-28) a method for forming a light-emitting device as applied to claims 1,3-5,34 above. Re claim 12, wherein the substrate includes sapphire (page 25, left column, lines 14-20).

Re claim 2, Kawaguchi teaches forming a light emitting device (LED), but lacks detailing about forming a first coating layer and second coating layer as in claim 2. Re claims 7-8, the first and second coating layer including  $Ga_uAl_{1-u}N$ . Re claim 9, MOCVD for depositing the coating layers. Re claim 10, including a buffer layer on the substrate. Re claim 11, the buffer layer include  $Ga_mAl_{1-m}N$ .

However, re claim 2, Applicant's admitted prior art teaches (at specification page 2, line 6 through page 3) forming a first coating layer formed from a compound semiconductor based on gallium nitride of a first conductivity type on the substrate; forming the compound semiconductor layer, as a light-emitting layer, over the first coating layer; and forming a second coating layer formed from a compound semiconductor based on gallium nitride of a second conductivity type over the light-emitting layer, a composition of the compound semiconductor layer based on gallium nitride differing from a composition of the compound semiconductor of the first and second coating layers (present specification page 2, lines 6-26); wherein, re claims 7-8, the first and second coating layer include AlGaN layer (present specification page 2, lines 20-25); wherein, re claim 9, MOCVD is used for depositing the coating layers; and wherein, re claims 10-11, a buffer layer of GaN ( $m=1$ ) is formed on the substrate, and wherein the first coating layer is formed on the buffer layer (present specification page 2, lines 20-25).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the light emitting device of Kawaguchi by forming a first coating layer and a second coating layers of AlGaN layer with a buffer layer on the substrate as taught by Applicant's admitted prior art. This is because of the desirability to form a high power structure blue and violet light emitting diode device.

Re claim 6, Kawaguchi does not detail about doping with foreign substance.

However, Applicants' admitted prior art also teaches (at present specification page 3, lines 22-25) doping the light-emitting layer with a p-type foreign substance and/or an n-type foreign substance to improve the luminance.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to the light emitting device of Kawaguchi by doping the light-emitting layer with a p-type foreign substance and/or an n-type foreign substance as taught by Applicant's admitted prior art. This is because of the desirability to improve the luminance of the light emitting device.

3. Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi et al (Article title "The formation of crystalline defects...", 1998, pp 24-26) taken with Mukai (Article title "InGaN-Based Blue Light Emitting Diodes..." L839-841).

Kawaguchi teaches (at pages 24-28) a method for forming a light-emitting device as applied to claims 1,3-5,34 above.

Re claims 13-17, Kawaguchi teaches forming an active layer, but lacks mentioning, re claim 13, the active layer sequence with a quantum film structure, re claim 14, including at least one GaN quantum film; re claim 15, as an InGaN/GaN quantum film structure; re claim 16, with at least one undoped GaN quantum film; and re claim 17, with a GaN quantum film or with an intrinsic GaN quantum film.

However, Mukai teaches (at Figure 1; page L839) forming a light emitting diodes including an active layer sequence with a quantum film (single quantum well , SQW, re claim 13), wherein the quantum film includes at least one GaN quantum film (re claim 15), wherein the quantum film structure includes an InGaN/GaN (Figure 1; re claim 16); wherein the quantum film includes at least one undoped GaN quantum film (Figure 1, re claim 17); and wherein the quantum film includes a GaN quantum film as an intrinsic GaN quantum film (Figure 1, re claim 18).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to the light emitting device of Kawaguchi by forming the active layer sequence with the single quantum film as taught by Mukai above. This is because of the desirability to form a highly efficient blue/green InGaN singly quantum well structure light emitting diodes (LED).

***Response to Amendment***

4. Applicant's arguments filed February 06, 2006 with respect to claims 1-17 and new claim 34 have been considered but are moot in view of the new ground(s) of rejection.

Applicant remarked that "Kawaguchi discloses that an indium mole fraction reaches the thermal equilibrium value...Thus, there should be no diffusion potential difference in the  $\text{In}_x\text{Ga}_{1-x}\text{N}$  layer with high defect density causing any energy barrier..." and "...improved light yield...".

In response, this is noted and found unconvincing. First, claimed subject matter, not the specification, is the measure of invention. Limitations in the specification cannot be read into the claims for the purpose of avoiding the prior art. In Re Self, 213 USPQ 1,5 (CCPA 1982); In Re Priest, 199 USPQ 11,15 (CCPA 1978). Nowhere in the claimed invention as recited in base claims 1 and 34 requires any of indium mole fraction. Nowhere in the claimed invention requires the light yield and improvement with respect to what light yield.

Contrary to Applicant's remarks, Kawaguchi also clearly discloses a range of indium mole fraction up to a thermal equilibrium value. In manufacturing a light emitting device of Kawaguchi, there is a diffusion potential difference between the compound semiconductor layers so that the device can be functioned and operated as the light emitting diode.

Additionally, by growing to form the compound semiconductor layer as disclosed by Kawaguchi, which is similar to the *claimed* invention as recited in base claims 1 and 34, the compound semiconductor layer is formed, in which in a vicinity of dislocations in the compound semiconductor layer, regions are produced in the compound semiconductor thickness than remaining regions of the layer having a lower compound semiconductor layer, and resulting in an energy barrier being built up in the regions having the lower thickness more than the other remaining regions, inherently.

Applicant apparently remarked that Mukai does not teach the dislocations...".

In response, this is noted and found unconvincing. The rejection is not overcome by pointing out that one reference does not contain a particular limitation when reliance for that teaching is on another reference. In Re Lyons 150 USPQ 741 (CCPA 1966). Moreover, it is well settled that one can not show non-obviousness by attacking the references individually where, as here, the rejection is based on combinations of references. In Re Keller, 208 USPQ 871 (CCPA 1981); In

Re Young, 159 USPQ 725 (CCPA 1968). Herein, in the combination of references, Kawaguchi, as a primary reference, clearly teaches forming a light emitting device having a compound semiconductor layer based on gallium nitride and being an active layer, in which in a vicinity of dislocations in the compound semiconductor layer, regions are produced in the compound semiconductor thickness than remaining regions of the layer having a lower compound semiconductor layer, and resulting in an energy barrier being built up in the regions having the lower thickness more than the other remaining regions, inherently. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to the light emitting device of Kawaguchi by forming the active layer sequence with the single quantum film as taught by Mukai above. This is because of the desirability to form a highly efficient blue/green InGaN singly quantum well structure light emitting diodes (LED).

Applicant has different reason for, or advantage resulting from doing what the prior art relied upon has suggested, it is noted that it is well settled that this is not demonstrative of non-obviousness, In Re Kronig 190 USPQ 425, 428 (CCPA 1976); In Re Lintner 173 USPQ 560 (CCPA 1972); the prior art motivation or advantage may be different than that of applicant while still supporting a conclusion of obviousness. In Re Wiseman 201 USPQ 658 (CCPA 1979); Ex Parte Obiaya 227 USPQ 58 (Bd. of App. 1985).

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael M. Trinh whose telephone number is (571) 272-1847. The examiner can normally be reached on M-F: 9:00 Am to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zandra Smith can be reached on (571) 272-2429. The central fax phone number is (703) 872-9306.

Art Unit: 2822

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Oacs-18



Michael Trinh  
Primary Examiner